

AMENDED IN SENATE AUGUST 21, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1713**

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**Introduced by Assembly Member Campos**

February 16, 2012

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An act to amend Sections 11165.7 and 11166 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 1713, as amended, Campos. Child abuse reporting.

Existing law, the Child Abuse and Neglect Reporting Act, requires a mandated reporter, as defined, to report whenever he or she, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observed a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. Failure to report an incident is a crime punishable by imprisonment in a county jail for a period of 6 months, a fine of up to \$1,000, or by both that imprisonment and fine. Existing law identifies commercial film and photographic print processors as mandated reporters, and requires any commercial film and photographic print processor who has knowledge of or observed in his or her professional capacity or employment any film, photograph, videotape, negative, or slide depicting a child under 16 years of age engaging in an act of sexual conduct to report the instance of suspected child abuse.

This bill would expand the application of those provisions to commercial film and photographic print or image processors, as defined, and would also expand the list of media to which those provisions apply to include, among other things, any representation of information, data, or an image, as specified.

This bill would also make technical, nonsubstantive changes and would update a cross-reference.

By imposing the reporting requirements on a new class of persons, for whom failure to report specified conduct is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 11165.7 of the Penal Code is amended  
2     to read:  
3     11165.7. (a) As used in this article, “mandated reporter” is  
4     defined as any of the following:  
5     (1) A teacher.  
6     (2) An instructional aide.  
7     (3) A teacher’s aide or teacher’s assistant employed by ~~any a~~  
8     public or private school.  
9     (4) A classified employee of ~~any a~~ public school.  
10    (5) An administrative officer or supervisor of child welfare and  
11    attendance, or a certificated pupil personnel employee of ~~any a~~  
12    public or private school.  
13    (6) An administrator of a public or private day camp.  
14    (7) An administrator or employee of a public or private youth  
15    center, youth recreation program, or youth organization.  
16    (8) An administrator or employee of a public or private  
17    organization whose duties require direct contact and supervision  
18    of children.  
19    (9) ~~Any~~ An employee of a county office of education or the  
20    State Department of Education, whose duties bring the employee  
21    into contact with children on a regular basis.  
22    (10) A licensee, an administrator, or an employee of a licensed  
23    community care or child day care facility.  
24    (11) A Head Start program teacher.

1 (12) A licensing worker or licensing evaluator employed by a  
2 licensing agency as defined in Section 11165.11.

3 (13) A public assistance worker.

4 (14) An employee of a child care institution, including, but not  
5 limited to, foster parents, group home personnel, and personnel of  
6 residential care facilities.

7 (15) A social worker, probation officer, or parole officer.

8 (16) An employee of a school district police or security  
9 department.

10 (17) ~~Any~~ A person who is an administrator or presenter of, or  
11 a counselor in, a child abuse prevention program in ~~any~~ a public  
12 or private school.

13 (18) A district attorney investigator, inspector, or local child  
14 support agency caseworker unless the investigator, inspector, or  
15 caseworker is working with an attorney appointed pursuant to  
16 Section 317 of the Welfare and Institutions Code to represent a  
17 minor.

18 (19) A peace officer, as defined in Chapter 4.5 (commencing  
19 with Section 830) of Title 3 of Part 2, who is not otherwise  
20 described in this section.

21 (20) A firefighter, except for volunteer firefighters.

22 (21) A physician and surgeon, psychiatrist, psychologist, dentist,  
23 resident, intern, podiatrist, chiropractor, licensed nurse, dental  
24 hygienist, optometrist, marriage and family therapist, clinical social  
25 worker, professional clinical counselor, or any other person who  
26 is currently licensed under Division 2 (commencing with Section  
27 500) of the Business and Professions Code.

28 (22) ~~Any~~ An emergency medical technician I or II, paramedic,  
29 or other person certified pursuant to Division 2.5 (commencing  
30 with Section 1797) of the Health and Safety Code.

31 (23) A psychological assistant registered pursuant to Section  
32 2913 of the Business and Professions Code.

33 (24) A marriage and family therapist trainee, as defined in  
34 subdivision (c) of Section 4980.03 of the Business and Professions  
35 Code.

36 (25) An unlicensed marriage and family therapist intern  
37 registered under Section 4980.44 of the Business and Professions  
38 Code.

39 (26) A state or county public health employee who treats a minor  
40 for venereal disease or any other condition.

1 (27) A coroner.

2 (28) A medical examiner; or ~~any~~ other person who performs  
3 autopsies.

4 (29) A commercial film and photographic print or image  
5 processor, as specified in subdivision (e) of Section 11166. As  
6 used in this article, “commercial film and photographic print or  
7 image processor” means ~~any~~ *a* person who develops exposed  
8 photographic film into negatives, slides, or prints, or who makes  
9 prints from negatives or slides, or who prepares, publishes,  
10 produces, develops, duplicates, or prints any representation of  
11 information, data, or an image, including, but not limited to, any  
12 film, filmstrip, photograph, negative, slide, photocopy, videotape,  
13 video laser disk, computer hardware, computer software, computer  
14 floppy disk, data storage medium, CD-ROM, computer-generated  
15 equipment, or computer-generated image, for compensation. The  
16 term includes any employee of ~~such a~~ *that* person; it does not  
17 include a person who develops film or makes prints *or images* for  
18 a public agency.

19 (30) A child visitation monitor. As used in this article, “child  
20 visitation monitor” means ~~any~~ *a* person who, for financial  
21 compensation, acts as *a* monitor of a visit between a child and ~~any~~  
22 ~~other~~ *another* person when the monitoring of that visit has been  
23 ordered by a court of law.

24 (31) An animal control officer or humane society officer. For  
25 the purposes of this article, the following terms have the following  
26 meanings:

27 (A) “Animal control officer” means ~~any~~ *a* person employed by  
28 a city, county, or city and county for the purpose of enforcing  
29 animal control laws or regulations.

30 (B) “Humane society officer” means ~~any~~ *a* person appointed or  
31 employed by a public or private entity as a humane officer who is  
32 qualified pursuant to Section 14502 or 14503 of the Corporations  
33 Code.

34 (32) A clergy member, as specified in subdivision (d) of Section  
35 11166. As used in this article, “clergy member” means a priest,  
36 minister, rabbi, religious practitioner, or similar functionary of a  
37 church, temple, or recognized denomination or organization.

38 (33) Any custodian of records of a clergy member, as specified  
39 in this section and subdivision (d) of Section 11166.

1 (34) ~~Any~~ An employee of any police department, county sheriff's  
2 department, county probation department, or county welfare  
3 department.

4 (35) An employee or volunteer of a Court Appointed Special  
5 Advocate program, as defined in Rule 5.655 of the California Rules  
6 of Court.

7 (36) A custodial officer, as defined in Section 831.5.

8 (37) ~~Any~~ A person providing services to a minor child under  
9 Section 12300 or 12300.1 of the Welfare and Institutions Code.

10 (38) An alcohol and drug counselor. As used in this article, an  
11 "alcohol and drug counselor" is a person providing counseling,  
12 therapy, or other clinical services for a state licensed or certified  
13 drug, alcohol, or drug and alcohol treatment program. However,  
14 alcohol or drug abuse, or both alcohol and drug abuse, is not, in  
15 and of itself a sufficient basis for reporting child abuse or neglect.

16 (39) A clinical counselor trainee, as defined in subdivision (g)  
17 of Section 4999.12 of the Business and Professions Code.

18 (40) A clinical counselor intern registered under Section 4999.42  
19 of the Business and Professions Code.

20 (b) Except as provided in paragraph (35) of subdivision (a),  
21 volunteers of public or private organizations whose duties require  
22 direct contact with and supervision of children are not mandated  
23 reporters but are encouraged to obtain training in the identification  
24 and reporting of child abuse and neglect and are further encouraged  
25 to report known or suspected instances of child abuse or neglect  
26 to an agency specified in Section 11165.9.

27 (c) Employers are strongly encouraged to provide their  
28 employees who are mandated reporters with training in the duties  
29 imposed by this article. This training shall include training in child  
30 abuse and neglect identification and training in child abuse and  
31 neglect reporting. Whether or not employers provide their  
32 employees with training in child abuse and neglect identification  
33 and reporting, the employers shall provide their employees who  
34 are mandated reporters with the statement required pursuant to  
35 subdivision (a) of Section 11166.5.

36 (d) School districts that do not train their employees specified  
37 in subdivision (a) in the duties of mandated reporters under the  
38 child abuse reporting laws shall report to the State Department of  
39 Education the reasons why this training is not provided.

1 (e) Unless otherwise specifically provided, the absence of  
2 training shall not excuse a mandated reporter from the duties  
3 imposed by this article.

4 (f) Public and private organizations are encouraged to provide  
5 their volunteers whose duties require direct contact with and  
6 supervision of children with training in the identification and  
7 reporting of child abuse and neglect.

8 SEC. 2. Section 11166 of the Penal Code is amended to read:

9 11166. (a) Except as provided in subdivision (d), and in  
10 Section 11166.05, a mandated reporter shall make a report to an  
11 agency specified in Section 11165.9 whenever the mandated  
12 reporter, in his or her professional capacity or within the scope of  
13 his or her employment, has knowledge of or observes a child whom  
14 the mandated reporter knows or reasonably suspects has been the  
15 victim of child abuse or neglect. The mandated reporter shall make  
16 an initial report by telephone to the agency immediately or as soon  
17 as is practicably possible, and shall prepare and send, fax, or  
18 electronically transmit a written followup report within 36 hours  
19 of receiving the information concerning the incident. The mandated  
20 reporter may include with the report any nonprivileged  
21 documentary evidence the mandated reporter possesses relating  
22 to the incident.

23 (1) For purposes of this article, “reasonable suspicion” means  
24 that it is objectively reasonable for a person to entertain a suspicion,  
25 based upon facts that could cause a reasonable person in a like  
26 position, drawing, when appropriate, on his or her training and  
27 experience, to suspect child abuse or neglect. “Reasonable  
28 suspicion” does not require certainty that child abuse or neglect  
29 has occurred nor does it require a specific medical indication of  
30 child abuse or neglect; any “reasonable suspicion” is sufficient.  
31 For purposes of this article, the pregnancy of a minor does not, in  
32 and of itself, constitute a basis for a reasonable suspicion of sexual  
33 abuse.

34 (2) The agency shall be notified and a report shall be prepared  
35 and sent, faxed, or electronically transmitted even if the child has  
36 expired, regardless of whether or not the possible abuse was a  
37 factor contributing to the death, and even if suspected child abuse  
38 was discovered during an autopsy.

39 (3) Any report made by a mandated reporter pursuant to this  
40 section shall be known as a mandated report.

1 (b) If after reasonable efforts a mandated reporter is unable to  
2 submit an initial report by telephone, he or she shall immediately  
3 or as soon as is practicably possible, by fax or electronic  
4 transmission, make a one-time automated written report on the  
5 form prescribed by the Department of Justice, and shall also be  
6 available to respond to a telephone followup call by the agency  
7 with which he or she filed the report. A mandated reporter who  
8 files a one-time automated written report because he or she was  
9 unable to submit an initial report by telephone is not required to  
10 submit a written followup report.

11 (1) The one-time automated written report form prescribed by  
12 the Department of Justice shall be clearly identifiable so that it is  
13 not mistaken for a standard written followup report. In addition,  
14 the automated one-time report shall contain a section that allows  
15 the mandated reporter to state the reason the initial telephone call  
16 was not able to be completed. The reason for the submission of  
17 the one-time automated written report in lieu of the procedure  
18 prescribed in subdivision (a) shall be captured in the Child Welfare  
19 Services/Case Management System (CWS/CMS). The department  
20 shall work with stakeholders to modify reporting forms and the  
21 CWS/CMS as is necessary to accommodate the changes enacted  
22 by these provisions.

23 (2) This subdivision shall not become operative until the  
24 CWS/CMS is updated to capture the information prescribed in this  
25 subdivision.

26 (3) This subdivision shall become inoperative three years after  
27 this subdivision becomes operative or on January 1, 2009,  
28 whichever occurs first.

29 (4) On the inoperative date of these provisions, a report shall  
30 be submitted to the counties and the Legislature by the *State*  
31 Department of Social Services that reflects the data collected from  
32 automated one-time reports indicating the reasons stated as to why  
33 the automated one-time report was filed in lieu of the initial  
34 telephone report.

35 (5) Nothing in this section shall supersede the requirement that  
36 a mandated reporter first attempt to make a report via telephone,  
37 or that agencies specified in Section 11165.9 accept reports from  
38 mandated reporters and other persons as required.

39 (c) Any mandated reporter who fails to report an incident of  
40 known or reasonably suspected child abuse or neglect as required

1 by this section is guilty of a misdemeanor punishable by up to six  
2 months confinement in a county jail or by a fine of one thousand  
3 dollars (\$1,000) or by both that imprisonment and fine. If a  
4 mandated reporter intentionally conceals his or her failure to report  
5 an incident known by the mandated reporter to be abuse or severe  
6 neglect under this section, the failure to report is a continuing  
7 offense until an agency specified in Section 11165.9 discovers the  
8 offense.

9 (d) (1) A clergy member who acquires knowledge or a  
10 reasonable suspicion of child abuse or neglect during a penitential  
11 communication is not subject to subdivision (a). For the purposes  
12 of this subdivision, “penitential communication” means a  
13 communication, intended to be in confidence, including, but not  
14 limited to, a sacramental confession, made to a clergy member  
15 who, in the course of the discipline or practice of his or her church,  
16 denomination, or organization, is authorized or accustomed to hear  
17 those communications, and under the discipline, tenets, customs,  
18 or practices of his or her church, denomination, or organization,  
19 has a duty to keep those communications secret.

20 (2) Nothing in this subdivision shall be construed to modify or  
21 limit a clergy member’s duty to report known or suspected child  
22 abuse or neglect when the clergy member is acting in some other  
23 capacity that would otherwise make the clergy member a mandated  
24 reporter.

25 (3) (A) On or before January 1, 2004, a clergy member or any  
26 custodian of records for the clergy member may report to an agency  
27 specified in Section 11165.9 that the clergy member or any  
28 custodian of records for the clergy member, prior to January 1,  
29 1997, in his or her professional capacity or within the scope of his  
30 or her employment, other than during a penitential communication,  
31 acquired knowledge or had a reasonable suspicion that a child had  
32 been the victim of sexual abuse that the clergy member or any  
33 custodian of records for the clergy member did not previously  
34 report the abuse to an agency specified in Section 11165.9. The  
35 provisions of Section 11172 shall apply to all reports made pursuant  
36 to this paragraph.

37 (B) This paragraph shall apply even if the victim of the known  
38 or suspected abuse has reached the age of majority by the time the  
39 required report is made.



1 (C) The local law enforcement agency shall have jurisdiction  
2 to investigate any report of child abuse made pursuant to this  
3 paragraph even if the report is made after the victim has reached  
4 the age of majority.

5 (e) Any commercial film and photographic print or image  
6 processor who has knowledge of or observes, within the scope of  
7 his or her professional capacity or employment, any film,  
8 photograph, videotape, negative, slide, or any representation of  
9 information, data, or an image, including, but not limited to, a film,  
10 filmstrip, photograph, negative, slide, photocopy, videotape, video  
11 laser disk, computer hardware, computer software, computer floppy  
12 disk, data storage medium, CD-ROM, computer-generated  
13 equipment, or computer-generated image, depicting a child under  
14 the age of 16 years engaged in an act of sexual conduct, shall report  
15 the instance of suspected child abuse to the law enforcement agency  
16 having jurisdiction over the case immediately, or as soon as  
17 practicably possible, by telephone and shall prepare and send, fax,  
18 or electronically transmit a written report of it with a copy of the  
19 film, photograph, videotape, negative, or slide attached within 36  
20 hours of receiving the information concerning the incident. As  
21 used in this subdivision, "sexual conduct" means any of the  
22 following:

23 (1) Sexual intercourse, including genital-genital, oral-genital,  
24 anal-genital, or oral-anal, whether between persons of the same or  
25 opposite sex or between humans and animals.

26 (2) Penetration of the vagina or rectum by any object.

27 (3) Masturbation for the purpose of sexual stimulation of the  
28 viewer.

29 (4) Sadomasochistic abuse for the purpose of sexual stimulation  
30 of the viewer.

31 (5) Exhibition of the genitals, pubic, or rectal areas of any person  
32 for the purpose of sexual stimulation of the viewer.

33 (f) Any mandated reporter who knows or reasonably suspects  
34 that the home or institution in which a child resides is unsuitable  
35 for the child because of abuse or neglect of the child shall bring  
36 the condition to the attention of the agency to which, and at the  
37 same time as, he or she makes a report of the abuse or neglect  
38 pursuant to subdivision (a).

39 (g) Any other person who has knowledge of or observes a child  
40 whom he or she knows or reasonably suspects has been a victim

1 of child abuse or neglect may report the known or suspected  
2 instance of child abuse or neglect to an agency specified in Section  
3 11165.9. For purposes of this section, “any other person” includes  
4 a mandated reporter who acts in his or her private capacity and  
5 not in his or her professional capacity or within the scope of his  
6 or her employment.

7 (h) When two or more persons, who are required to report,  
8 jointly have knowledge of a known or suspected instance of child  
9 abuse or neglect, and when there is agreement among them, the  
10 telephone report may be made by a member of the team selected  
11 by mutual agreement and a single report may be made and signed  
12 by the selected member of the reporting team. Any member who  
13 has knowledge that the member designated to report has failed to  
14 do so shall thereafter make the report.

15 (i) (1) The reporting duties under this section are individual,  
16 and no supervisor or administrator may impede or inhibit the  
17 reporting duties, and no person making a report shall be subject  
18 to any sanction for making the report. However, internal procedures  
19 to facilitate reporting and apprise supervisors and administrators  
20 of reports may be established provided that they are not inconsistent  
21 with this article.

22 (2) The internal procedures shall not require any employee  
23 required to make reports pursuant to this article to disclose his or  
24 her identity to the employer.

25 (3) Reporting the information regarding a case of possible child  
26 abuse or neglect to an employer, supervisor, school principal,  
27 school counselor, coworker, or other person shall not be a substitute  
28 for making a mandated report to an agency specified in Section  
29 11165.9.

30 (j) A county probation or welfare department shall immediately,  
31 or as soon as practicably possible, report by telephone, fax, or  
32 electronic transmission to the law enforcement agency having  
33 jurisdiction over the case, to the agency given the responsibility  
34 for investigation of cases under Section 300 of the Welfare and  
35 Institutions Code, and to the district attorney’s office every known  
36 or suspected instance of child abuse or neglect, as defined in  
37 Section 11165.6, except acts or omissions coming within  
38 subdivision (b) of Section 11165.2, or reports made pursuant to  
39 Section 11165.13 based on risk to a child which relates solely to  
40 the inability of the parent to provide the child with regular care

1 due to the parent's substance abuse, which shall be reported only  
2 to the county welfare or probation department. A county probation  
3 or welfare department also shall send, fax, or electronically transmit  
4 a written report thereof within 36 hours of receiving the information  
5 concerning the incident to any agency to which it makes a  
6 telephone report under this subdivision.

7 (k) A law enforcement agency shall immediately, or as soon as  
8 practicably possible, report by telephone, fax, or electronic  
9 transmission to the agency given responsibility for investigation  
10 of cases under Section 300 of the Welfare and Institutions Code  
11 and to the district attorney's office every known or suspected  
12 instance of child abuse or neglect reported to it, except acts or  
13 omissions coming within subdivision (b) of Section 11165.2, which  
14 shall be reported only to the county welfare or probation  
15 department. A law enforcement agency shall report to the county  
16 welfare or probation department every known or suspected instance  
17 of child abuse or neglect reported to it which is alleged to have  
18 occurred as a result of the action of a person responsible for the  
19 child's welfare, or as the result of the failure of a person responsible  
20 for the child's welfare to adequately protect the minor from abuse  
21 when the person responsible for the child's welfare knew or  
22 reasonably should have known that the minor was in danger of  
23 abuse. A law enforcement agency also shall send, fax, or  
24 electronically transmit a written report thereof within 36 hours of  
25 receiving the information concerning the incident to any agency  
26 to which it makes a telephone report under this subdivision.

27 SEC. 3. No reimbursement is required by this act pursuant to  
28 Section 6 of Article XIII B of the California Constitution because  
29 the only costs that may be incurred by a local agency or school  
30 district will be incurred because this act creates a new crime or  
31 infraction, eliminates a crime or infraction, or changes the penalty  
32 for a crime or infraction, within the meaning of Section 17556 of  
33 the Government Code, or changes the definition of a crime within  
34 the meaning of Section 6 of Article XIII B of the California  
35 Constitution.